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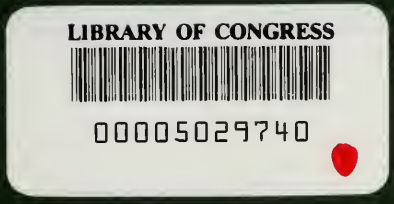

SPEECH

OF

HON. R. S. BALDWIN, OF CONNECTICUT,

IN FAVOR OF

THE ADMISSION OF CALIFORNIA INTO THE UNION,

AND

ON THE TERRITORIAL BILLS, AND THE BILL IN RELATION TO FUGITIVE SLAVES, IN CONNECTION WITH MR. BELL'S COMPROMISE RESOLUTIONS.

DELIVERED

IN SENATE OF THE UNITED STATES, MARCH 27 AND APRIL 3, 1850,

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THE TERRITORIAL QUESTION.

The Senate having under consideration the resolutions of Mr. BELL, of Tennessee, and the motion of Mr. FOOTE to refer them to a Select Committee of Thirteen,

Mr. BALDWIN said: To that motion, Mr. President, an amendment was offered by myself on a former occasion, which was subsequently modified at the suggestion of the Senator from Missouri, [Mr. BENTON,] to exclude from the consideration of the committee the subject-matter of the message of the President transmitting the constitution of California, and recommending her admission into the Union. It is upon that motion that I propose to address the Senate, availing myself of the opportunity it affords me to express my views somewhat at large upon other questions connected with the proposition and with the resolutions introduced by the Senator from Tennessee, [Mr. BELL.]

I have listened, Mr. President, with deep interest to the discussions in the Senate on the questions presented by the message of the President, and the resolutions of the distinguished Senators from Kentucky and Tennessee. In the general tone and spirit which have characterized the debate, I have seen much to admire and something to regret. It has been my endeavor to keep my own mind free from any undue excitement, with a determination, in any legislative act which I may be called upon to perform, to be governed by the spirit of the Constitution and of the distinguished men who coöperated in its formation and adoption. That sacred instrument speaks in no sectional language. The voices of the whole American people are there united in harmonious concord, proclaiming union, justice, liberty, domestic tranquillity, and the general weal, to be its glorious purposes. It was made and adopted in a spirit of liberal indulgence to conflicting interests and sentiments, tolerating, no doubt, some institutions then regarded as temporary, and some compromises which many of us of the present day doubtless would wish had been otherwise. But they are there—they are in the Constitution; and so far as my constituents are concerned, I feel myself authorized by the resolutions of the General Assembly of Connecticut, now lying upon your table, to say that the people of my own State are prepared to adhere to and abide by those compromises, to the letter and in the spirit of the same.

Such, sir, are the instructions, such is the solemn declaration of the General Assembly of the State of Connecticut, passed by a nearly unanimous vote of both Houses of the Legislature. But they have also instructed their Senators, and requested their representatives in Congress, to oppose, in all constitutional ways, any and every new measure of compromise by which any portion of our free territory may be given up to the encroachments of slavery, or by which the people of the United States may be made responsible for its introduction or continuance. These instructions are in accordance with my own deliberate judgment. It will, therefore, afford me great pleasure to conform to them. I wish, however, not to be understood as concurring in sentiment with the distinguished Senator from Michigan, [Mr. CASS,] whom I do not now see in his seat, and with my friend from Illinois, [Mr. DOUGLAS,] who have addressed the Senate on the subject of instructions. I should never be willing, standing here as an American Senator, to record my vote for any measure contrary to the dictates of my own judgment, enlightened by the deliberations of this body, even though I were positively instructed to do so by the Legislature of my State. If I believed in this doctrine of instructions—if I believed that it was improper for a Senator to avail himself of the position in which his constituents had placed him, to vote against their wishes as expressed in their resolutions—I should feel myself bound to render something more than a nominal obedience to their requisitions. I should not feel at liberty to avail myself of that position in the debates of this body to neutralize my own votes by endeavoring to influence the votes of others against it. I would keep the word of promise fully, if I felt myself bound by it at all.

The resolutions now before the Senate, offered with the best of motives by my distinguished friend from Tennessee, and the proposition to refer those resolutions to a committee composed of gentlemen from the North and from the South, who are to deliberate with a view of making some compromise of sectional interest, and bringing before the body, in the form either of one act or of several acts, the results of their deliberations, do not commend themselves to my judgment. The question of California, presented with the message of the President, ought not, in my opinion, to be connected with any other question whatever. It stands upon its own foundation. If the people of California are entitled to be admitted into this Union, they have a right to have that question considered by itself. They are here claiming a right—a right stipulated by treaty—a right which we are pledged, as they insist, to accord to them. If they are correct in this opinion, certainly it is

but fair and just that the question which they have presented should not be embarrassed by connection with any other proposition.

The proposition before the Senate, and the resolutions of the distinguished Senator from Tennessee also, assume that these are questions which are to be decided with reference to northern and southern interests, as if those interests were antagonistic to each other. In my view, this is an unsound, and, in its tendency, an unconstitutional mode of legislation. It tends to produce and to encourage sectional claims and sectional combinations, which it was the desire, the anxious desire, of the framers of the Constitution to prevent. The Constitution regards this nation as one people. It knows no North or South, or East or West. It regards us as one. In the celebrated proclamation of President Jackson, of 1832—a measure, which, in my judgment, reflected more honor, more credit, upon the reputation of that distinguished individual, than any other act of his public life—he says:

"The terms used in its construction show it to be a Government in which the people of all the States collectively are represented—a Government which operates directly upon the people individually, and not on the States."

It has provided in itself all the securities which were deemed necessary or proper for a fair expression of the will of the nation upon every question of public interest. It sedulously guards against all combinations of sectional interest, as distinct from the general welfare. It confers no power to make sectional compacts, or arrangements, for any purpose, much less for purposes of that description, to bind the legislation of a future Congress, or to prevent, in any legitimate form, the expression of the popular will. Sir, we all represent one country, and, in this sense, one constituency. And while standing here in this body, our primary allegiance is, in my judgment, due to that country which in all its parts is here represented; whose requirements of us are embodied in that constitutional Government we have all sworn to support. We are not legislating for the States of which this Union is composed. We are legislating for the people; and not for the people as represented by their particular States, but for the people of the United States. As these resolutions, then, assume, contrary to what I regard as the just theory of the Constitution, and of the framers of that instrument, that we are here as a divided people, sectionally divided, having sectional interests which it is proper for us as legislators to compromise, I am opposed to any such committee.

But, sir, in regard to the State of California, now applying for admission into the Union, I am not aware how that can be regarded as a sectional question between the North and the South. I am not aware of any peculiar interests which my constituents, as such, have in the decision of that question, other than the people of any other portion of this country. I am not aware that the introduction of the Senators and Representatives from California, to coöperate with us in our legislation here, will be any more likely to conduce to the promotion of the interests of my constituents than to the interests of those of any other portion of the country. It is not, therefore, upon that ground that I sustain their claims to admission. It is well known to members of this body, who were here during the prosecution of the Mexican war, that I was opposed to the war. I regarded it as a war of conquest, and as irreconcilable, on that ground, to the principles of free government, upon which our national institutions are based. I voted with the Senator from North Carolina, [Mr. Badger,] who addressed the Senate the other day, against the acquisition of all this territory, and against the stipulations for the admission of any of the territories acquired into the Union as States. Sir, the cession was made; the treaty was ratified. The dominion of the Mexican territory was transferred to the United States. What was then their condition? California had, as a part of the Mexican Republic, a territorial government of its own—laws of its own—for the regulation of its municipal concerns distinct from those of the Mexican Republic. The general system of law was the same in both. Under that Government, and under the laws of its enactment, or the laws enacted for it by the Republic of Mexico, the inhabitants of California enjoyed their liberty, their property, and their civil rights. Under those laws they held them at the time of the cession. What then was our stipulation in regard to them? By the ninth article of the treaty with Mexico, it is provided that,

"The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

Their liberty and their property, in the mean time, until in the judgment of Congress the proper period should arrive for their incorporation into the Union as States, were stipulated and guaranteed to them by the treaty. What was the liberty thus guarantied in the mean time to the Mexican inhabitants of California? Not their political liberty, of course, because they were not in a condition at that time to be admitted into this Union; but their civil liberty—a right to be protected by just and expedient laws, properly administered. This was the guarantee. Their property was that which they held under those laws. Here, then, was a solemn duty assumed by the people of the United States by this treaty, binding them, until the people of California should be in a condition to be incorporated into the Union, to give them full protection, by law, for their liberty, their property, and their civil rights.

That treaty, of course, became the supreme law of the land; and it became obligatory upon the President of the United States, as the Executive of this nation, to see that its requirements were duly executed, as it is our duty now to see that the other stipulations of that treaty are faithfully fulfilled. What were those laws that were thus to be administered for their protection! They were of necessity, either the laws which, at the time of the treaty, existed and regulated the property and the social relations of the people, or they were laws to be substituted for them by the Government to which dominion was transferred. They could emanate from no other authority. If, then, the then existing Mexican and departmental laws were not abrogated by new enactments, the treaty continued them in force just as much as if they had been reënacted. The stipulations for the protec-

tion of liberty and property could not otherwise be fulfilled. There was no necessity for any act of Congress, such as was passed upon the transfer of Florida, to continue in force the existing laws. The treaty necessarily, in the fulfillment of its own stipulation for the protection of the rights which the people of the United States had assumed the obligation to protect, continued those laws in force as fully as they could have been continued by any enactment whatever. California became thereby, in fact, a territorial government or department of the United States, having its own system of laws, though not, perhaps, the power of enacting new ones, but having a system of laws which were continued in operation, and administered by officers existing in that territory, formerly as a territory of the Mexican republic, but now as a territory of the United States. These laws were not only not abrogated, but they were, in fact, expressly recognized by Congress; for, by a joint resolution passed on the 2d of March last, the Congress of the United States invited emigration to the Territories of California, of Oregon, and of New Mexico, and directed the Secretary of War to furnish to the emigrants who might apply for them, arms and ammunition, at cost, for their protection. What made California and New Mexico, regions bordering upon each other, separate territories in the opinion of those by whom this law was enacted? They could be separate only, because they were governed by distinct systems of local administration—distinct systems of law for the protection of the civil rights and the property of the inhabitants. If the cession which was made by the extension of the boundary of the United States, so as to comprehend all this region, obliterated the territorial landmarks, destroyed the territorial government, why, sir, they could not have been spoken of and treated by Congress as distinct territories, as they were. It is not and cannot be claimed that Congress was bound to continue in force all the laws then existing for the government of the territories. They might be amended and improved; but the treaty guarantied that Congress should do all that was necessary, either by the adoption of the preëxisting laws, or by the enactment of others, to secure the people of those territories in the enjoyment of their liberty and property. Well, sir, the benefit of this guarantee, although made to the Mexican inhabitants, necessarily accrued to all who, by the invitation of Congress, chose to emigrate, and make California a habitation and a home. Now, there can be but one system of local legislation for all the inhabitants. Whether, therefore, the inhabitants of California were the original Mexican inhabitants, or whether they were the emigrants introduced in pursuance of our invitation, Congress was equally bound to afford them a system of law adequate to their protection.

Mr. YULEE, (interposing.) Mr. President, if the Senator——

Mr. BALDWIN. I should prefer not, as I do not like the practice which has become so frequent of late in the Senate, unless I have made some erroneous statement of fact which the Senator wishes to correct.

Mr. YULEE. That is precisely what I rise for—to correct a fact which seems to me material.

Mr. BALDWIN. Then I will yield the floor.

Mr. YULEE. The Senator stated, in relation to Florida, that the Spanish laws were recognized by an act of Congress as continuing in force upon the transfer of that country to the jurisdiction of the United States. I rise for the purpose of correcting the Senator upon that point of fact. The Senator is entirely mistaken in the statement which he makes. On the contrary, the only code of laws which was recognized as having force in Florida after possession was taken by General Jackson was the code of laws adopted and issued by General Jackson, under authority of a joint resolution of Congress, which empowered the President of the United States to appoint an officer to receive possession of Florida, and to hold it in possession, conferring upon that officer all civil, judicial, and legislative functions which had been previously exercised by Spanish officers. General Jackson, under that authority, recognized such laws as he deemed suitable for the territory, and enacted other laws himself; and under these laws the people of Florida were governed until the territorial act was passed. The act to which the Senator refers had reference to the laws adopted and promulgated by General Jackson, and not to the Spanish laws previously in existence. I make the correction now, because I observe that the same error has been made in the other House, and perhaps in this on a previous occasion.

Mr. BALDWIN resumed. It is perfectly immaterial, as far as regards my own argument, what system of laws had been adopted in relation to Florida. I introduced it incidentally, for the purpose of showing that, in my judgment, if there was a treaty binding this Government to protect the citizens in their liberty and their property, and this Government had neither enacted nor authorized the enactment of any other system of laws than that which then existed, and under which the inhabitants were protected in their civil rights, it necessarily follows that those laws must be continued; for, otherwise, the treaty obligations could not be fulfilled. Had California continued as it was, composed of a few sparse settlements, the laws in force at the time of the cession would have been ample for their protection. Their interests were small; their transactions with each other were comparatively few; their temptations to crime were slight; but, under our authority, by our invitation, a vast influx of population from all parts of the world, have migrated to California. Ships from Europe and Asia and Western America, as well as from our own coast, have entered their magnificent harbors, richly laden with the products of every climate. Mines of gold of unsurpassed richness have allured adventurers of every description, and given a new impulse to labor in all the departments of industry. Towns and cities have arisen among them, as by magic; thousands of people are clustered together, from different nations, of dissimilar habits, differing in their usages, and the systems of law to which they had been accustomed in the places from which they migrated—differing not merely from those of the Mexican inhabitants but of each other. It is perfectly obvious then, sir, that the system of law, and the administration which would have yielded competent protection to the Mexicans inhabiting this territory at the time of the treaty, would now be totally inadequate to the exigencies of society. It is true, sir, that there is there a very large propor-

tion from the best population of this country. It is mingled with a population from other regions requiring the restraint of severer laws than any that have heretofore existed there. We all know that, in a remote country like that, thus newly settled by those who are strangers to each other, who come with habits thus dissimilar, the ordinary restraints of society, which stand in the place of law in older countries, have but a feeble hold upon the population. What, then, was the necessary result? That liberty and property were in a great measure unprotected. Crimes were committed, and there were no adequate tribunals to try and punish the offender. Contracts were made and broken, and there were none to administer justice. Rights of property were violated with impunity. Who was responsible for all this? The old Mexican laws, the old departmental officers, were entirely inadequate to the purposes for which Government was now needed. What, then, should be done? They appealed to Congress. Congress, representing the supreme power of this Government, to whose dominion they had been transferred by Mexico, refused to interfere—refused to aid them with a system of laws adequate to the circumstances in which they were placed. Even the writ of *habeas corpus* and the right of trial by jury were vainly attempted in this body, at the last session, to be conferred upon this distant people. Mexico had relinquished her dominion to a power that refused to exercise it efficiently for their protection. The greater portion of the people were our own citizens, our own kindred, our sons. What could they do? What was the President, bound as he was by the duties of his office to see that the stipulations of this treaty were properly fulfilled, required to do? Was he to fold his arms quietly, and leave these people unprotected, without an effort to secure to them the fulfillment of the stipulations of the treaty? Was it the duty of the people of the territory to remain unprotected by the neglect of Congress? or was it their right, as American citizens, inheriting as their birthright the great principles of liberty, for which their fathers had contended through the war of the Revolution, to seek protection for themselves by the establishment of a government which Congress had refused to provide for them? Were they not right when, under these circumstances, they applied to the only representative of the sovereign power of this Government who was among them? and was he not bound to yield his assent, as he did, to their request? It was their right. Allegiance and protection are reciprocal duties. It was our duty, it was the duty of our public officers, of our Executive, to see that those people were provided with a government adequate to their protection.

Mr. BORLAND, (interposing.) Mr. President, will the Senator permit me to ask him a single question?—to ask him if he did not himself refuse to vote for giving a government to California?—if he did not refuse to vote for a measure which he says was indispensably necessary?

Mr. BALDWIN. The question, Mr. President, as regards my own vote at the last session of Congress, is entirely irrelevant to the proposition I am now maintaining. I did vote, sir, against one of the propositions to give to this people a government, because I thought that it was not such a government as they ought to have—not such a government as the obligations of good faith required us to give them.

When this territory was about to be ceded to the United States, or rather during the negotiations with the Mexican Government, her commissioners expressed an earnest desire that the people of the territories which were ceded might be protected against the introduction of slavery there. I voted at the last session of Congress against the proposition for giving to this people the government which was then proposed, because I was unwilling that the existing laws of Mexico, which prohibited slavery, should be abolished by Congress. I was unwilling that any territorial government should be formed that did not contain a provision to secure them that protection which they had desired so earnestly to make a condition of the cession. But, sir, I myself introduced to the consideration of this body a proposition to extend to this people the benefits of their existing laws, and to add to them the privilege of the trial by jury and the writ of *habeas corpus;* a writ to which every American citizen ought, in my judgment, to be entitled. No Government, sir, can acquire dominion, and refuse to exercise it for the protection of a people situated like these, without giving to that people the right to provide for their own protection. You may call it revolution, sir, or by any other name; but it has its origin and its defence in natural right. It rests on the principle upon which all free government is based—upon the inherent right of every man and of every community to provide for their own preservation.

This people, thus driven by necessity to the formation of a government, have shown, by the wisdom which distinguished the action of their convention, their capacity for self-government. This, sir, will not be denied by any one who has read the proceedings of that body. And if they have proved this, they have proved a right to come here, as they have done, and ask of us to say, in the exercise of an enlightened judgment, whether the proper time has not arrived for their admission into the Union as one of the States; and if so, to require us to fulfill the obligations of the treaty and the assurances that were given by Mr. Buchanan and by the American Commissioners to the Mexican Government after the ratification of the treaty by the Senate. What were those assurances? Mr. Buchanan, in commenting on the ninth article of the treaty as altered by the Senate, in his letter addressed to the Minister of Foreign Relations of the Mexican Government, on the 18th March, 1848, said:

"Congress, under all the circumstances, and under the treaties, are the sole judges of this proper time, because they, and they alone, under the Federal Constitution, have power to admit new States into the Union. That they will always exercise this power as soon as the condition of the inhabitants of any acquired territory may render it proper, cannot be doubted. By this means the Federal Treasury can alone be relieved from the expense of supporting territorial governments. Besides, Congress will never turn a deaf ear to a people anxious to enjoy the privilege of self-government. Their desire to become one of the States of this Union will be granted the moment it can be done with safety."

This, sir, was what the Mexican Government were told, after the Senate had made their alterations in the ninth article in the treaty, was the true construction of the language they had introduced. It was after the reception of this letter, giving the construction of our own Government

in regard to this and other alterations that were made, that the Mexican Government acted in the ratification of the treaty. Are we not, then, bound by it?

It has been said that they have done a revolutionary act in the formation of their Government. Why, sir, they have done no act against the sovereignty of this Government. They have not opposed our dominion; they have not set up for themselves an independent government. What they have done, they have done with the coöperation of the only representative of our Government on the spot, who knew and felt the necessities of that people, and which, in his judgment, required them to act precisely as they did act. Whatever they have done, they have done in acknowledgment of our right to the exercise of dominion, and in pursuance of their desire to avail themselves of the provisions of treaty by which they were entitled to become incorporated into our Union. And, sir, if they had said nothing of this kind, they would only have followed the examples set them by the ancestors of many of them more than two hundred years ago. The colonists of Connecticut met in January, 1639—finding themselves out of the limits of Massachusetts, and of every other jurisdiction—and formed a plan of government, under which they agreed to live—a system of government which, with few exceptions, in all its great principles for the security of liberty and human rights—for the advancement of education—for the promotion of all the objects of a wise and good government—remained substantially the government of that State for a period of nearly two hundred years. That government was thus formed by about eight hundred individuals, who had come to that remote region to form a settlement, without the consent of the British crown, without a charter, and with no title to the land except such as they fairly purchased from the aboriginal inhabitants. It remains a proud monument of their wisdom, and furnishes enduring evidence of their recognition and adoption, at that early period, of the great principles of human liberty. So the colony of New Haven, then a separate colony, having no connection with Connecticut, but which afterward united with it under the charter of Charles the Second—they, too, under the auspices of their distinguished leaders, John Davenport and Governor Eaton, at the head of a colony of emigrants from the city of London, men of intelligence, of education, and of sound judgment, formed a constitution for themselves, under which they lived in security and happiness.

The question, then, for Congress to decide is, not whether it is strictly regular for California to form a constitution and demand admission, as a legal right, into this Union—a right perfect and absolute—it is whether, when they have framed a constitution and applied to Congress, and when we concede that in substance the *casus fœderis* has arisen, whether under these circumstances, we will not receive them, although there may have been some irregularity in their incipient proceedings; whether we will not overlook that irregularity in the case of California, as we have done in other cases, and admit them to a full participation of our rights? If we find that the sentiments of the people have been fairly expressed, why have they not the same claim that the people of Arkansas, of Michigan, or of Tennessee even, presented, when they applied respectively for admission into the Union. The people of these States had, it is true, been under a territorial government different from the territorial government which existed in California, but no more a territorial government, than that which was continued in existence by the effect of the treaty of Guadalupe Hidalgo. The exigencies which, in the opinion of Congress, entitled those people to admission had arisen. The territorial government, in permitting the formation of the constitution, had been guilty, in some sense, of the usurpation of a power that strictly belongs to Congress; but it was waived, as the Senator from Maine [Mr. HAMLIN] has shown in his speech. Forms, sir, have rarely, in the history of our territorial governments applying for admission as States, been rigidly adhered to. Why, sir, what right had the convention of 1787, which framed the Constitution under which we now live, to destroy the old articles of confederation, and present to the people a constitutional government for their adoption? Their powers were limited to the amendment of the articles of confederation. But, sir, they saw that the exigency had arisen when this people required something more—that a government should be established—and they assumed the responsibility of framing and presenting to the people a constitution. Mr. Madison, in speaking of this in the Federalist, says:

> "They must have recollected that, in all great changes of established governments, forms ought to give way to substance; it is essential that such changes should be instituted by some informal and unauthorized propositions."

The declaration of independence, too, was not an act competent to the colonial legislatures; it was an act of original inherent sovereignty by the people themselves, in whose name they undertook to act and to declare these United States to be one people. But if the act of California were to be regarded even as a revolutionary measure, and not merely an irregular exercise of their right under the treaty, by a people desirous of coming into the Union, and enjoying the rights and protection stipulated by the treaty, we should all be ready to admit that it is much less obnoxious to censure than a revolutionary act by an old State with a view to disunion and all the disastrous consequences that would follow.

This people have done no act in disregard of our authority or in denial of our right to dominion over them. Seeing the impossibility of our conferring upon them a government such as was required by their wants, they formed a government for themselves, of which they ask our sanction and approval. They call our attention to their population, now probably exceeding one hundred and twenty thousand, and daily increasing with unexampled rapidity; to their capacity for freedom; to their republican constitution; and the earnest desire of the people to be admitted to the enjoyment of the rights and privileges to which they claim to be entitled under the treaty.

If then, Mr. President, the people of California are here under a claim of right; if they have a right to call upon Congress to "judge," in the language of the treaty, of the "proper time" for their admission; if they have exhibited themselves before us in such a light that, in the exercise of an honest judgment, we are constrained to say, they are entitled to admission; what, I ask, has the North, what has the South, what has any sec-

tional interest to do with its decision? Why should they be mixed up with our controversy in regard to local questions not affecting themselves? The great question which has agitated us in regard to other territories, they have settled, rightfully settled, for themselves. Then, why is this introduced as one of the elements of compromise, by which conflicting opinions or conflicting interests are to be adjusted by a committee chosen with reference to sectional interests? If they have a right to be here, if they have a right to be heard, if they have a right to claim admission, because the "proper time" in the judgment of Congress has arrived, they have a right to come here, standing upon their own merits, and to claim that they shall not be embarrassed in any way, by being involved in the agitating questions of sectional politics. What good effect, Mr. President, can be anticipated, under these circumstances, from the appointment of a committee of compromise to take into consideration this claim of California? A committee of this body, not formed upon any principle of compromise, but one of our regular committees, has already reported a bill—a separate bill—for the admission of California, and territorial bills for the government of the other territories acquired from Mexico.

But it is said by gentlemen representing sectional interests, that the admission of California as a free State will disturb some fancied equilibrium which it is desirable to maintain between the free States and the slave States; and hence it is proposed to exclude California, notwithstanding she is here under the claim of right, until, by some arrangement, a new State can be introduced formed out of Texas, and perhaps until we can form a Territorial Government for New Mexico and Utah which shall open them for the introduction of the peculiar institutions of the South, or until we shall settle the account of northern aggressions, as they are called, in regard to fugitive slaves and anti-slavery petitions for the exercise of the constitutional power of this Government. I can perceive, sir, no reasonable hope of benefit in the organization of any such committee. On the other hand, should they report as a compromise a series of separate bills—one for the admission of California, one for the admission of States from the territory of Texas, one for Territorial governments without the proviso of the ordinance of 1787, for New Mexico and Utah, and one in relation to fugitive slaves—why, sir, if any one of these should be adopted, and the others should fail, should we not hear of imputations of bad faith charged upon all who voted against any measure thus reported? Sir, I can consent to the appointment of no committee which shall have even the moral power to pledge me or my action as a member of this body in regard to any future measure which may be offered to my consideration. I must act for myself. I must act according to the dictates of my own judgment; and every Senator should be in a condition to act upon every individual proposition that is made to this body, without being subject to the imputation of bad faith, if some measures which he approves should be adopted, and other measures which he disapproves rejected, by his vote. If, on the other hand, instead of reporting these different measures in separate bills, they are all incorporated into one bill, what is the consequence? Why, sir, unless they all meet the approval of the majority of the members of this body, California is to be kept out of the Union, her people are to be left unprotected, and the faith of the Government pledged by the treaty is to be violated, because we cannot agree to carry out all the elements of compromise that may be recommended by this committee. Sir, as I said before, this is a mode of legislation which, in my judgment, is against the spirit of the constitution; it is wrong, though well intended, I know, on the part of the distinguished Senator from Tennessee who introduced the resolutions, and of whose patriotism and spirit of conciliation, no one can entertain a doubt. It is a course of legislation which invites sectional combinations and the pursuit of sectional claims, for the purpose of being presented as the elements of some future compromise.

The resolutions of the honorable Senator from Tennessee [Mr. BELL] propose that Congress shall renew the assent given by the joint resolution of March, 1845, for the formation of three or four new slave States within the present territory of Texas, asserting, on the face of the resolution, that the faith of the Government is already pledged for their admission. If, indeed, Mr. President, that be the effect of the joint resolution, no act of ours can strengthen or impair the obligation. Whether it be so or not, appears to me to be a question which this Congress are not competent to solve. The entire territory of Texas has been admitted as a State; her admission as a State has been acquiesced in by the people of the United States; she is a member of this Union as a sovereign State, standing upon an equal footing with all her sister States. But, sir, the joint resolution which invited her, and which, it is claimed, constituted an irrevocable compact with Texas in regard to future subdivisions and the admission of new States formed out of her territory, was protested against by many States as being an unconstitutional enactment. That, sir, I may indeed say, was the sentiment of the majority of this body; for the joint resolution could never have been passed, had there not been a clause attached to the bill, giving the President the alternative of acting by negotiation, which, it was confidently supposed by Senators who voted for the resolution, the President elect was pledged to adopt.

Sir, the constitutionality of that act was protested against by my own State, and by the State of Massachusetts; and her protest was recorded here, after the passage of the joint resolution, and the acceptance by Texas of the overture it proposed. That resolution was passed in March, 1845; the General Assembly of Connecticut, at their session in May following, passed resolutions in these words:

"*Resolved*, That the power to admit into the Union new States, is not conferred upon Congress by the Constitution.

"*Resolved*, That the annexation of a large slaveholding territory by the Government of the United States, with the declared intention of giving strength to the institution of domestic slavery in the States, is an alarming encroachment upon the rights of the freemen of the Union, a perversion of the principles of republican government, and a deliberate assault upon the compromises of the Constitution, and demands the strenuous, united, and persevering opposition of all persons who claim to be the friends of human liberty."

There was another resolution of similar import, which I will not read at this time. Assuming it to be the true construction of the Constitution, as in my judgment it is, that foreign territories can be an-

nexed by the treaty-making power alone, it would follow that the joint resolution for the annexation of Texas was simply void. If so, I am not prepared to say that the acquiescence of the people of the United States in the union of Texas, has any other effect than to place her, by reason of that acquiescence, and not by reason of the joint resolution, on the footing of the other States in the Union.

In the debate on the British commercial convention, in 1816, the distinguished Senator from South Carolina [Mr. CALHOUN] stated his opinion to be, that whatever could be done by the treaty-making power could not be done by law. The Supreme Court of the United States have decided that the treaty-making power is competent to acquire foreign territory, and all the practice of this Government anterior to the annexation of Texas was in conformity with that decision of the court. No territory had been acquired from a foreign Government except by the action of the treaty-making power. The power to admit new States into the Union is a distinct power, applying only to the territories of the United States—a power to be exercised effectually only when a new State is formed and ready for admission. The Constitution of the United States declares that "no new State shall be formed or erected within the jurisdiction of any other State;" not that this may be done by the consent of Congress. "New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of Congress." But the clause in the Constitution prohibiting the formation of any new State within the jurisdiction of any other State has no qualification whatever. Congress cannot now authorize the formation of a new State within the jurisdiction of Texas. A new State, when formed, can, in the view of the Constitution, have no relation to any other State, but only to the Union. Texas, then, must first cede her jurisdiction, divide her debt, apportion her domain, withdraw herself into reduced limits, and leave out of her jurisdiction entirely the territory which it is claimed shall be admitted into the Union as a new State, before Congress can, in pursuance of the Constitution, authorise its formation.

When Maine came into the Union there was a preëxisting law, passed by Massachusetts, authorizing her to form a State independently of Massachusetts. And so it was when Kentucky came into the Union by the cession of her territory by Virginia. Has Texas ever offered to do this? Has Texas ever manifested a desire to embrace the condition annexed to the joint resolution? Have "the South" independently of Texas—the undefined "South," which has been represented by so many Senators upon this floor—has she a right to insist that Texas shall do this, or shall be permitted to do it, for the purpose of restoring some fancied equilibrium by the introduction of new Senators into this body? Is California to wait until some new *rotten-borough* system can be brought into existence for such a purpose? Whether any future Congress will be bound to admit any new States within the present territory of Texas, may well be left to them to decide when Texas shall consent to dismemberment. An act of future legislation will then be required, whatever we may now resolve. It is a grave question which I do not consider it necessary for any of us now to undertake definitely to decide. Some future Congress may be obliged to determine it It is enough for us to know—

"*Non nostrum tantas componere lites.*"

When Texas, in December, 1845, having assented to the conditions in the joint resolution and disrobed herself of her sovereignty, offered herself for admission, fourteen Senators in this body recorded their votes against her, comprising, if I recollect aright, all of the Whig members, with the exception of four, including the honorable Senator from Georgia, [Mr. BERRIEN,] who felt themselves bound by the pledge made by the joint resolution and accepted by Texas, and voted for her admission. The fourteen Whig Senators who voted against it acted in accordance with the protest of Massachusetts, which was then presented by her Senators.

Suppose, Mr. President, that the objection was not to the joint resolution annexing Texas, but to some of the conditions, as unconstitutional. Suppose there had been a condition, offering to Texas, if she would come into the Union, the privilege of being entitled to four Senators, or that she might keep a navy in time of peace; and Texas had consented to that joint resolution, and offered herself for admission; would it have been binding upon this Government? Would the faith of the Government have been pledged? Texas, of course, knew when she was negotiating for admission into this Union, what were the rights and obligations the enjoyment of which she was seeking to acquire. She had perfect knowledge of the Constitution of the United States. Without designing to express myself any definite opinion on the question which I have no right now to decide, I protest against its being sent to a committee of compromise, that may lead to an imputation of bad faith, if, when they present some other measure which I may feel disposed to sustain, I should be unwilling to reassert in the language of these resolutions, the obligations of that pledge. Suppose that Canada should, in the course of some few years, be considered ripe for admission into the Union, and by a majority of one vote a joint resolution should pass admitting her, and authorizing her territory to be cut up from time to time into ten or twelve new States, to affect or change some supposed equilibrium of power: are the South—is this body—now prepared to say that it would be in the power of any one Congress—a Congress chosen for no such purpose—if by any means a majority of a single one could be secured, to bind so essentially the policy of this Government for any or all future Congresses? This is a grave question—one which deserves mature consideration. When the time shall come, when Texas will be ready to make application to subdivide herself in the manner proposed, other men will be here to occupy our places—men who will claim the right to act and judge for themselves; and I have no doubt that they will judge justly and wisely. If they shall be of opinion that new States from the territory of Texas are entitled to admission—if, upon the great principles which have hitherto governed Congress in its administration of this power, they shall then be of opinion that the proper time

has arrived for such action, they will no doubt do what shall seem right and just, under the circumstances which shall then surround them, unaffected by anything that we may now resolve. According to the spirit of the Constitution, ought not those who are to be called upon to exercise a power of this magnitude—those who must act legislatively before that power can be carried into effect—to be in a condition to exercise their own free judgment, untrammelled by the legislation of those who have preceded them years before, and who, under less favorable circumstances, may have endeavored to bind their actions?

But, sir, this is a question that no State but Texas can raise. What has the South to do with it? Texas has done nothing to manifest her desire to have it taken into consideration now. She retains the whole of her jurisdiction still, and, instead of curtailing, she is seeking to enlarge it, by swallowing up the greater part of New Mexico. When she does cede, the question will then arise, not with Texas, but with the new State to be created out of the territory of which Texas shall waive her right of jurisdiction. It will be presented on its own merits, and will be much more likely to be decided justly then than in a period of excitement like the present. It appears to me that we had better address ourselves to the duties of legislation which call for our action, avoiding what may reproduce the excitement and agitation that attended that most disastrous event—the annexation of Texas. What right have we to interfere, even to propose to Texas to dismember herself for the purpose of restoring the equilibrium of the slaveholding States? What would Virginia say if this Congress were to throw this apple of discord in her midst, and ask her to divide herself into two or more States? What would any States in this Union say to a proposal by Congress to divide up their territory? Would they acquiesce in it? Would they submit to it? No, sir; they would say it is time enough for Congress to act, when Congress can act pursuant to the Constitution upon territory beyond the jurisdiction of any State.

I trust then, Mr. President, that California is not to be connected with any question like this—is not to be called upon to wait until Texas shall have taken another census to ascertain that she has population enough for another State—until Texas shall be able to arrange with other portions of the territory the burden of her debt, and be willing to make a voluntary offer of a daughter as in readiness for the union. California, as I have said, is here upon her own right; she is here demanding the fulfillment of a treaty stipulation. We cannot, in my judgment, ask her to stand by until any other questions than those which concern herself, and herself alone, are arranged.

With regard to the other questions which have been connected with this subject, it seems to me that the only constitutional and proper mode of treating them, is to act upon them as they arise. The question of the extension of slavery over free territory, is a question which, in my judgment, does not admit of compromise. It involves a deep-seated principle. It is a question which, when thus presented, must be met, and met fairly, and decided as a question of principle, on which we may differ, to be sure; but it must be decided by the action of the constitutional organs of this Government, in the only way that their action is contemplated by the Constitution. If they decide it wrong, we have a judicial tribunal for those who feel aggrieved by the decision. But the question is one that the people of this country will never be satisfied, in my judgment, to see made an element of compromise, and for the very reason that it is a question of principle. I am not referring to the morality of slavery, to the evils of slavery; but I am assuming the fact to be as it is, and as we all know it to be, that a large portion of the population of these United States are, in principle, opposed to assuming any portion of the responsibility for its extension into territory now free. The Constitution never contemplated any extension of slavery. The Constitution has nothing to do with the recognition of slavery, except as it exists in the case of persons held to labor by the laws of particular States in the Union, whom it regards as debased by their servitude to the amount of two-fifths of their personal rights, and as such, allows to be the basis of representation and taxation; and for the performance of the duty imposed in regard to fugitives from labor. The Constitution recognizes the fact that involuntary servitude may exist by the laws of the States which tolerate it, in regard to persons owing service. It can exist by the power of Congress, in my judgment—except where the Constitution, for the mere purpose of recapturing and returning a fugitive, allows it—only where Congress possesses despotic power. Slavery can exist under no Government that does not possess despotic power. Man cannot be made a slave, unless some other man has by law the power to make him so—for the reason that, in the absence of human law, the natural law of equality must prevail, which gives to every man, in the language of Chief Justice Marshall, "the fruits of his own labor." It may creep in silently in the absence of positive enactment, and be recognized by a general usage among the people, which ultimately acquires the force of law; but its legality can be established only by the force of positive law. To whom, then, do these territories belong? They belong to the nation. No State in this Union, can, under the Constitution, acquire territory. They can neither make war, compact, nor treaty. Dominion must be exercised by the power that acquires it. The President, as the treaty-making power, represents emphatically the nation. The States, as such, exert no influence, except such as their Senators, appointed under the Constitution, and the Representatives from the different districts in the State, are enabled to exert as members of their respective bodies. They do not act here, as under the old Confederation, as States, but by a majority, however the body may be constituted. In the exercise, then, of this dominion over the territories, there can be but one will, and that will is the collective will of the people. That will can be manifested only by the legislation of Congress. The treaty-making power having the right to acquire territory and dominion, Congress, by the general grant of power, to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department thereof, has the power of exercising the dominion. Congress, of course, must, unless they are restrained by some prohibitory clause, judge of the necessity or the propriety of their legislation in reference to the purposes of

the union, and the welfare of the inhabitants of the acquired territory, both present and prospective. Their legislation affects the people of the territory, not as citizens of a State, but as citizens of the United States. The States to which they belonged cannot follow them with their laws, when they have left the State to settle in a Territory. They owe no longer allegiance to the State. They are citizens of the United States, inhabitants of its Territory, and subject alone to its laws. Otherwise, if the States were to be regarded in the government of the territory; if the State laws are to have any force or application there, it would follow that there could be no supreme law of the people, because the States being equal, the law of every State would be equal to that of every other: neither could be supreme, and there would be as great a variety in the codes of law as there are States to be affected by any peculiar interests they might desire to protect. The constitution of Mexico, and her laws, it has been shown, prohibited slavery at the time of the annexation of these territories to the United States. That law, regulating the personal rights of the inhabitants of Mexico, and their relations to each other, not being a political law entering into the government of the territory, remains in force, notwithstanding the cession, until it is abrogated by the Government that has succeeded to the dominion.

But it is said that slavery, being purely a domestic institution of the States, Congress, as the legislative organ of the Government of the United States, has no concern with it. If it be meant by this, that Congress has no concern with slavery in the States, why, it is perfectly true. Nobody claims that Congress can exercise any power over slavery in any State. Nobody, sir, in any part of the country, within my knowledge, sets up any claim of that sort. But, if it be meant that Congress cannot therefore prohibit it, where the policy of a territory is to be regulated exclusively by Congress, I deny the proposition. Congress must exercise its dominion, in reference to the welfare of the territory, precisely in the same manner, having reference to the great fundamental principles upon which our Government is formed, as any State Legislature is required to exercise its dominion within its own limits. Congress must judge for the inhabitants of a territory what laws it shall enact for them, and what laws it shall prohibit them from enacting, because Congress exercises the dominion. Well, if this be so, what ground is there for any State to say that Congress interferes with her rights? Do these territories belong to the several States? I know that some of the resolutions which have been passed by the State Legislatures have been passed in that form. But there is nothing in the Constitution to sanction any such idea. The treaty-making power negotiates for the nation—not as the agent of the States. The territory is acquired for the Union. The constituencies of the nation are the people, not the States. The people are equal, undoubtedly; but every citizen has not the right, therefore, as it is claimed, to go upon the territory, either with his property or without his property, until Congress chooses to invite emigration to the territory. When the citizens do go there, they stand in the territory upon an equal platform; they are all treated alike; for all the laws within any given jurisdiction affect the inhabitants residing in that jurisdiction alike. It has been insisted that, in the absence of any positive prohibition of slavery in the territories by Congress, slavery can go there on the ground that every individual has a right to take what the Constitution of the United States admits to be property. That depends upon the sense in which this admission, if there be such, is to be understood. If the Government of the United States recognizes merely the fact that certain persons, by the laws of certain States, owe service, or are deemed slaves by the laws of those States; and if the Government of the United States has assumed the obligation of giving extra territorial force to those laws in one particular case only—that of a wrongful escape, as it is called, from the dominion thus legally exercised over the slave—does it follow, if the master voluntarily takes his slave out of the jurisdiction of the State in which he is thus held, that the Constitution of the United States can in that case recognize him as a slave? Not at all. This question has been repeatedly decided. It has been uniformly held that that clause in the Constitution of the United States in regard to the restoration of fugitive slaves, has no application whatever to a slave who is taken voluntarily beyond the jurisdiction of the State whose laws have created the relation. The law on this subject is perfectly well established, not only in Great Britain, but in this country. In Burge's Conflict of Laws, a work of high authority, the law is thus stated:

"There exists," says Burge, "a status which is legal in the country in which it is constituted, but illegal in another country to which the person may resort. In this conflict there has been an uniformity of opinion among jurists, and of decisions by judicial tribunals, in giving no effect to the *status*, however legal it may have been in the country in which the person was born, or in which he was previously domiciled, if it be not recognized by the law of his actual domicil. This principle was adopted by the supreme council of Mechlin as established law, in 1531. It refused to issue a warrant to take up a person who had escaped from Spain, where he had been brought and legally held in slavery."—*Christ. Dec. tom.* 4, *Dec.* 80.

"By the law of France, the slaves of their colonies, immediately on their arrival in France, become free."

"In the case of Forbes *vs.* Cochrane, 2 Barn and Cress., 463, this question is elaborately discussed and settled by the English court of K. B

'The right to slaves, (it is there said,) when tolerated by law, is founded, not on the law of nature

'but on the law of that particular country. It is

'law *in invitum;* and when a party gets out of th

'power of his master, and gets under the protectio

'of another power, without any wrongful act don

'by the party giving that protection, the right

'the master, which is founded on the municip

'law of the particular place only, does not cor

'tinue. The moment a foreign slave puts his fo

'on our shores, he ceases to be a slave, becaus

'there is no law here which sanctions his bein

'held in slavery; and the local law which held hi

'in slavery against the law of nature has lost i

'force.' "—9 *Eng. C. L. Rep.* 115.

That is the principle of all the decisions upo this question. It is recognized as law by the Supreme Court of the United States. It is recognized as law by Chief Justice Shaw, in Mass

chusetts, in the case of Lucas, which I had occasion to cite on a former discussion. How are the rights of the master to be asserted where there is no law establishing slavery? The slave may escape; how is the master to recover him? The slave brings the writ of *habeas corpus;* by what law in force in that territory can the master declare him to be held? Clearly, by none. In view of these principles, I am very clearly of opinion, Mr. President, that slavery is now prohibited by the continuing Mexican law in the Territory of New Mexico, and in all the territory over which it is now proposed to establish territorial governments. If so, it may then be asked, Why do you claim that Congress should, in the territorial bills, superadd a provision for the prohibition of slavery? Why do an act which is unnecessary, slavery being already prohibited there? If a territorial bill is passed, and the powers of government conferred upon those who may emigrate to the territory, and there is no restriction to prevent the establishment of slavery, it may go there; it may silently creep in; it may get a foothold in that way, as, it has already been remarked in the course of the debate, it has done in almost every State where it has ultimately established itself. It is to prevent the possibility of slavery being established in the free territory that many are desirous to extend over it the ordinance of 1787. If a territorial government is established there—if laws are made differing from the old Mexican laws now in force—if those Mexican laws are abrogated—why, we all know that if the climate is adapted to slavery, the avowed determination which has been distinctly manifested in several of the southern States to introduce it at all hazards, leaves little room to doubt that it may, and ultimately will, find access there. But southern gentlemen, in whose opinions confidence is reposed, deny that the Mexican laws prohibiting slavery are now in force. It is claimed that the Constitution of the United States has already found its way into the territory and established slavery there. Having already considered this legal question, I will not stop now to speak of it again; but if this opinion be extensively entertained by southern lawyers, unless there is a distinct provision by Congress for its exclusion, can it be said that there is no danger that slavery will get a foothold in the Mexican territory, which is now free?

It is said that the laws of nature forbid it; and therefore it will be regarded as a wanton insult upon the feelings or the prejudices of southern gentlemen, if such a prohibition is contained in the territorial bill. But here again the facts are denied. It is asserted by southern gentlemen, that this territory is adapted to slave labor. It has been asserted in this body that slavery will go there if it is not prohibited. The very excitement, the very agitation which has prevailed in different parts of the country upon this subject, shows that such an opinion is entertained. Is it to be supposed that the people of the South would become agitated and excited to such a degree as to threaten danger to the Union itself, unless there was some real interest to be affected by the questions about which this excitement has arisen?

Are we required to believe that the southern States, who unanimously enacted the ordinance of 1787, can now, at this late period, regard it as offensive that that ordinance shall be applied to other territories? Can it be believed that, if there was no reason to expect that slavery would find its way into the territories, there would be any more excitement likely to grow out of the application of the ordinance in this case than in the case of Oregon, or of the territory north of the Missouri line? Why should there be? No new principle is now asserted. It is merely the application of an old principle, settled and well established, and repeatedly enacted from the origin of the Government down to the present day, to a new territory, and to a territory which, when we acquired it, was as free from slavery as the territory of any of the free States of this Union.

And, sir, as to the matter of feeling. As has already been said, the people of the free States, and individuals from all parts of the country who are opposed to the system of slavery, regard it as a principle which is not to be yielded; that territory which is now free shall remain so; and that, therefore, if there be any danger of its being permitted to become slaveholding territory, it ought not to become so for the want of any action of the Congress of the United States which it may constitutionally adopt to prevent it. There is no unkind feeling in the matter. None is entertained. None whatever is intended to be indicated. It is the same feeling applied to these territories that led to the unanimous adoption of the ordinance of 1787. If gentlemen from the South think slavery will go there if not prohibited, other gentlemen here are authorized to assume that it will go there unless it is prohibited. And if there be this danger, then gentlemen from the North know perfectly well that there is but one opinion among their constituency in regard to the policy of affixing the prohibition.

But, sir, I regard it as important on another ground. Texas was annexed to this Union,—and that annexation is the cause of all this trouble,—with a view to strengthen and sustain the system of slavery in the South. There are other Mexican possessions in the vicinity of Texas of an equally enticing character, and the same spirit of cupidity for the acquisition of foreign territory that led to the annexation of Texas and the conquest of these territories, will hereafter lead to other wars, other conquests, other annexations.

Mr. RUSK, (interposing.) Will the honorable Senator allow me one single moment? I have heard it frequently asserted upon this floor that Texas was annexed to the United States for the purpose of strengthening the slaveholding power. No such element entered into the question, so far as Texas was concerned. It was a subject which was never taken into consideration by her; and I was not aware, and am not inclined to believe, that it was the motive of the United States. I can speak confidently for Texas.

Mr. DAWSON. Will the honorable Senator allow me to ask the Senator from Texas one question?

Mr. BALDWIN. Certainly.

Mr. DAWSON. Will the Senator from Texas inform the Senate whether, during the period that Texas was an independent Republic, slaves were imported there from any other country than the United States?

Mr. RUSK. Never, sir. At the very first Legislature, the importation of slaves from any other country than the United States was prohib-

ited, and made punishable as piracy. It was never done, sir; and could not be done.

Mr. BALDWIN. I alluded to the documents published to the world by the organ of this Government, under the administration of President Tyler—to a document published under the signature of the distinguished Senator from South Carolina, [Mr. CALHOUN;] his letter to Mr. Pakenham, the British Minister at Washington.*

Mr. SEWARD. And of Mr. Upshur, also.

Mr BALDWIN. Yes; and his predecessor, Mr. Upshur. These documents are amply sufficient, in my judgment, to establish the point. I have not got them now at hand; but they have been placed before us here during the debates upon this subject. I must be permitted to draw my own conclusions from them. If other gentlemen draw different conclusions from these documents, they are at liberty to do so; but, sir, it has been distinctly avowed on this floor, by the distinguished Senator from South Carolina himself, that he urged the annexation of Texas on the ground that Great Britain was making efforts to procure the abolition of slavery in that Republic; which, if successful, would leave an exposed frontier to the aggression of the abolitionists, and endanger the institution in the bordering States. And, sir, causes may exist with regard to the other provinces of Mexico contiguous to Texas, which will seem to demand their acquisition for a similar purpose. It is certain, indeed, that they will exist. Those territories are now free; and if it is understood to be the settled and irrevocable policy of the Government, in accordance with what was the policy of this Government in 1787, to regard free territory as not subject to the admission of slavery, then I say the temptation to wars of annexation in that direction, will cease.

I do not, Mr. President, intend to occupy the time of the Senate with discussing at large either the moral or the political aspects of slavery. I do not consider this a fit occasion for the discussion of the one, and I have heretofore submitted to the Senate fully, my sentiments with regard to the other. I do not, therefore, deem it necessary now to occupy their time with the further discussion of them.

But, Mr. President, it is claimed that these questions shall go to a committee, for the purpose of being compromised, with a view to a final settlement of the account between the different sections of the Union in regard to the recovery of fugitive slaves, and the agitation growing out of the course pursued by individuals in the free States in relation to this subject. I propose, Mr. President, to say a few words in regard to the aggressions which have been imputed by the honorable Senator from South Carolina and others, to the free States in reference to fugitive slaves; and I beg to say, sir, that so far as my own State is concerned, I deny that she has ever been unfaithful to any obligation imposed upon her by the Constitution of the United States. Prior to the decision of the Supreme Court, in the case from Maryland which has been alluded to—the case of Prigg *vs.* the State of Pennsylvania—it was the opinion of the Legislature of Connecticut that it was a duty pertaining to the States, and not to the Government of the United States, to provide the means of enforcing the provision of the Constitution of the United States on this subject. They passed a law for the performance of that duty in a manner calculated to fulfill what they supposed to be their obligations under the Constitution, and at the same time to secure the free citizens of the State from the danger to which they were exposed from the summary action of inferior State officers, acting under the law of Congress. They prohibited their inferior magistrates from the exercise of the functions conferred on them by the act of Congress, and provided that any judge of the supreme or superior courts, any judge of the county or other court, having power under the laws of the State to issue the writ of *habeas corpus*, might, upon the application of any person claiming a fugitive from service under the laws of another State, issue a warrant for the apprehension of the fugitive, to bring him before such judge for a hearing. If he claimed to be a free man, the law provided that, at the request of either party, an impartial jury should be summoned to hear the case, and determine upon the respective rights of the parties. And if that jury should find that the individual did owe service to the person who claimed him as a slave, then it was made the duty of the judge to grant a certificate for his delivery, pursuant to the provision of the act of Congress. When the decision was made by the Supreme Court in the case of Prigg *vs.* the State of Pennsylvania, that all action of State legislatures on the subject was unconstitutional, and that this whole business pertained exclusively to the United States, to be exercised, in accordance with its laws, by its own tribunals, the State of Connecticut repealed the statute which had been enacted in good faith, when she supposed it to be her duty to act in this matter. Not being willing that every inferior magistrate should exercise, without responsibility to the State, the tremendous power conferred upon them by Congress, of deciding the question of human liberty or slavery, she prohibited them from acting as State magistrates under the act of Congress. But, sir, the act contained a proviso that nothing therein should be construed to impair any rights which, by the Constitution of the United States, might pertain to any person to whom, by the laws of any other State, labor or service might be due from any fugitive escaping into the State of Connecticut, or to prevent the exercise in that State of any powers which may have been conferred by Congress on any judge or other officer of the United States in relation thereto. Now, sir, in my judgment, this is right. The judges of the United States now have the power to perform this duty under the Constitution; but the inferior magistrates of the States have not, and, in my opinion, ought not to have, the right to exercise it. Why should they? Whose duty is it to perform this service now? The highest tribunal of the land has declared it to be the duty of the Government of the United States, and that State laws interfering in any way with its performance are null and void; that the

* In the letter of Mr. Calhoun to Mr. Pakenham, dated Washington, April 27, 1844, he says: "The United States in concluding the treaty of annexation with Texas, are not disposed to shun any responsibility which may fairly attach to them on account of the transaction. The measure was adopted with the mutual consent, and for the mutual and permanent welfare of the two countries interested. *It was made necessary in order to preserve domestic institutions* placed under the *guaranty of their respective constitutions, and deemed essential to their safety and happiness.*"

State magistrates are not compelled to perform it, but that it properly belongs to the officers appointed by the Government of the United States. Well, sir, what is the character of this duty, and by whom should it be performed? By your laws as they now exist, by the judges of the United States. In every State they have the power to exercise it. Who else can be constitutionally qualified for its performance? Who but a judge of the United States, holding his office by the independent tenure of a judge, as prescribed by the constitution, can perform this judicial duty?

Without concluding, Mr. BALDWIN gave way to an adjournment.

WEDNESDAY, *April* 3, 1850.

Mr. BALDWIN resumed and concluded the speech, as follows:

Mr. President, when I last addressed the Senate on the topics involved in this debate, which has since been so painfully interrupted, I was commenting on the imputed aggressions of the non-slaveholding States, and, among others, on the charge implied by the report of the Committee on the Judiciary, that they had wrongfully refused to aid by legislation in the reception of fugitive slaves. Having repelled, successfully, as I believe, the imputation that my own State had been unfaithful to any obligation imposed by the constitution, and shown that, by the decision of the highest judicial tribunal in the land, no duty whatever in relation to such fugitives rested on the States, I was considering the question: By whom and in what manner the duty imposed by the Constitution ought to be performed? I had stated, but without discussing the proposition, that it pertained exclusively to the courts or judges of the United States, holding their offices by the independent tenure prescribed by the Constitution. This will appear, I think, very clearly, by a comparison of the two clauses in the Constitution that have been referred to in the debate, relative to fugitives from justice, and fugitives from service. The first is in these words:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

The object of the demand by the Executive of a State, under this clause of the Constitution, is to obtain the surrender of a person charged with crime, who has fled from justice, in order that he may be remanded for trial to the State from which he fled, and which alone can have jurisdiction of his offence. It contemplates no trial, of course, in the State where the fugitive is arrested, nothing beyond the simple inquiry necessary to ascertain, preliminarily to his surrender, that he is in truth a fugitive from justice, duly charged with crime in the State from which he fled. On the ascertainment of these facts, he is surrendered by the Executive, and not by the judicial tribunals of the State.

The clause relative to fugitives from service, on the contrary, has a totally different purpose. Its language is this:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The fugitive from labor is not pursued or claimed for the purpose of remanding him for trial in any other State. He is not required as an offender who has fled from justice, to be tried in the jurisdiction from which he has escaped. He is pursued, if a slave, on a claim that he is the property of the claimant, whose delivery to his absolute control he has a right to demand at the place where the fugitive is found. The proceeding, therefore, whatever it may be, in that jurisdiction, having for its object the surrender of the person of the alleged fugitive to the claimant, as property, is necessarily final. The moment the surrender is made, the control of the claimant over the person of the fugitive is complete and absolute. This clause in the Constitution has reference only to those classes of servants who, by the laws of any State, owe service which they are compellable by personal restraint to render to him to whom it is due. It includes not merely slaves, but apprentices also, who are subject to the personal control of their masters during the period of their apprenticeship. It relates only to persons who escape from the State under whose laws they are held in involuntary servitude into another State. It provides that a fugitive shall not be discharged from such service by reason of any law or regulation in the State to which he may flee; in other words, that he shall still be held to service under the laws of the State from which he escaped, and shall be delivered up for that purpose.

The effect of the clause is, therefore, to give extra-territorial force to the laws of that State over the fugitive, and to deprive him of the benefit of the law of the State to which he has fled, if there be one, or, if not, of the law of Nature, which would otherwise govern, prohibiting slavery. His escape from his former domicil is regarded as a *wrong*, from which he is precluded as a wrong-doer from taking benefit.

The party to whom his services are due may, according to the decision of the Supreme Court, under this clause of the Constitution, pursue and reclaim him, first, by simple recaption, without warrant; or, second, by a judicial claim preferred to the competent authority for the delivery of the fugitive. "A claim," said Judge Story, in giving the opinion of the court in the case of Prigg *vs.* Pennsylvania, "in a just juridical sense, is a de-'mand of some matter of right made by one per-'son upon another to do or to forbear to do some 'act or thing as a matter of duty." If, on an arrest being made in pursuance of such a claim, the person seized as a fugitive alleges that he is free, his allegation is in accordance with the presumption of law; for the law in every free State, where slavery does not exist, presumes that every man within the limits of its jurisdiction is a freeman, until the contrary is established by evidence. The case, then, constitutes, in the language of the Supreme Court, a controversy between the parties, arising under the Constitution of the United States, within the express delegation of judicial power given by that instrument. "It is plain," says Judge Story, "inasmuch as the right is a 'right of property, capable of being recognized 'and asserted by proceedings before a court of 'justice, between parties adverse to each other, it 'constitutes in the strictest sense a controversy 'between the parties, arising under the Constitu-'tion of the United States, within the express

'delegation of judicial power given by that instru-
'ment." It is a question involving on one side a mere claim of property; on the other, human liberty—a right of inappreciable value, which is to be, in effect, finally decided by the result of the investigation. It cannot be assumed in the first instance, that the person thus seized is a fugitive, or that he ever was a slave. These facts, which lay at the foundation of the jurisdiction of the tribunal, and are necessary for its action, must be judicially established by evidence satisfactory to the judge. The inquiry is not, as in the case of the fugitive from justice, for the purpose of remanding him for trial to another jurisdiction. It is for the purpose of delivering him up to the claimant as property, to be removed at his pleasure, to his former residence, or to a slave market, to be sold among strangers into hopeless slavery. Surely, before this can be done under the Constitution of the United States, in a State where the person arrested is presumed to be free, it must be satisfactorily proved that he is a fugitive from another State, and that he owes involuntary service under its laws to the claimant. The decision is, in effect, final and without appeal.

How, then, can it be said, with propriety, that this is a case in which anything short of full proof will answer the requirements of justice? Has not the man who is seized in a free State as a slave, but who claims to be a freeman, a right, before he shall be withdrawn from his own jurisdiction, from a region where he is surrounded by his friends, who can prove his title to freedom, to have a full trial before a competent tribunal, which shall ascertain the facts in controversy by unquestionable evidence? Is he to be surrendered up to perpetual slavery upon a mere *ex parte* affidavit of the claimant? What is there to distinguish this case, except in its greater magnitude, from any other investigation before judicial tribunals where there are conflicting claims? These two persons, in the free State where the proceedings are held, stand upon equal ground at the outset of the investigation. The alleged fugitive stands there as a freeman, and with the rights of a freeman, until he is proved to have been a slave. How, then, can the court discriminate between the claimant and him whom he has seized, and say that anything short of full and entire proof shall be enough to authorize his transportation beyond the limits of the State to which he claims to belong?

Sir, the difficulties growing out of this great question are intrinsic and inevitable; they are increasing as slavery is abolished in one State after another. When the act of 1793 was passed, nearly all the States of this Union were slave States. In many of them every man of color was presumed to be a slave. When brought before a tribunal for the purpose of investigation, he appeared before that tribunal with every presumption against him; but now, one State after another having abolished the system of slavery which then prevailed, he stands before the tribunal before which he is arraigned, as a freeman, and as such is entitled to all the rights and to all the privileges that pertain to freemen before any tribunal, until the contrary is established. Were it not, sir, for this clause in the Constitution, a slave escaping from a slave State to a State where slavery did not exist could not be pursued and recaptured at all, because the free State, when not bound by any such provision as exists in our Constitution, would be under no obligation, by any law of comity, to give extra territorial force to the laws of the State from which the fugitive escaped. He would be discharged by the simple operation of the law which there prevailed, making every man equal to every other man. If there were no positive law prohibiting slavery, the law of nature remaining unrepealed would fix the relations of every individual within the territory. The Constitution, then, for this single purpose of the recovery of the fugitive slave, overrides the local law of freedom, and, by giving extra territorial force to the laws of the State from which he fled, authorizes his recaption. It also assumes the duty of judicially surrendering him upon the claim of the party to whom his services are due, when established by proper evidence before its tribunals. It is a case, then, arising wholly under the Constitution of the United States, since, but for that clause in the Constitution, no such claim could be made or pursued in a free State. No State court could have entertained jurisdiction, as such, of an application to restore a fugitive slave. The courts of a free State could not apply the rule of comity to the laws of a foreign State contravening its own policy; and, notwithstanding the clause in the Constitution, if a slave be brought voluntarily into the jurisdiction of a free State, and there escape, no remedy whatever exists for his recovery. The claim of the party in a free State is *strictissimi juris*. The presumption, in the first instance, is always against its validity, and it must be clearly established in order to subject the individual seized to the disabilities under which he is placed by the Constitution. We have then, sir, presented in a free State a controversy between parties who are, till the contrary is shown by evidence, presumed to be of equal rights; the object of the claim is, by the judgment of a judicial tribunal, upon evidence, to degrade one of them to the condition of a chattel, and cause him to be delivered up to the absolute power of the other.

Let it be assumed, then, in accordance with what is really the presumption of law, or, in other words, what the law itself assumes, that the person claimed is a freeman—a citizen of a free State, and entitled to protection as such—what tribunal is he entitled to demand to enable him to maintain his rights? Does the Constitution of the United States authorize a postmaster appointed by the Postmaster General, a collector, a commissioner even, to settle this important question—a question of far greater magnitude than any that can be brought before our judicial tribunals, affecting property merely? Is it right or safe, that high judicial duties of this sort should be imposed on the subordinate executive officers of the Government—officers who are not selected with any view to their competency to perform them? Or is not every individual thus seized entitled to have his case tried and heard before the ordinary judicial tribunals of the land—before independent judges, who are appointed for the administration of justice in all controversies coming within the jurisdiction of the judicial power of this Government? If it be true, as the Supreme Court have declared it to be, that these controversies arising under the Constitution are within the express delegation of the judicial power, upon what ground is it claimed that any portion of this power can be vested in persons who are not appointed in the constitutional mode

for the exercise of judicial functions? In the case of Martin & Hunter, decided as early as the first Wheaton's Reports, the Supreme Court of the United States "held that it was the duty of Con-'gress to vest the whole judicial power of the Uni-'ted States, in courts ordained and established by 'itself." The remark, it is true, was subsequently qualified, and confined to that judicial power which is exclusively vested in the United States. It has been shown that the power now in question is exclusively vested in the United States, and does not pertain to the State governments or their tribunals in the free States. In the case of Houston *vs.* Moore, in the 5th of Wheaton's Reports, Judge Washington, who gave the opinion of the court, disclaimed the idea that Congress could authoritatively bestow judicial powers on State courts and magistrates; and it was held to be perfectly clear that Congress cannot confer jurisdiction upon any courts but such as exist under the Constitution and laws of the United States, though the State courts may exercise jurisdiction in cases authorized by the laws of the States, and not prohibited by the exclusive jurisdiction of the Federal courts. This decision of the Supreme Court was in conformity with a decision which had been previously made by the high Court of Delegates in the State of Virginia. How then, I ask again, consistently with these decisions, and with the express provision of the Constitution "that the judicial power 'of the United States shall be vested in one Su-'preme Court, and in such inferior courts as Con-'gress may from time to time establish, whose 'judges shall hold their offices during good beha-'vior, and shall receive a compensation that shall 'not be diminished during their continuance in of-'fice"—how can it be claimed that the judicial power can be vested in any other officers than the courts or judges so appointed?

On the other hand, if this be not a judicial power, it cannot be imposed by Congress on the courts or judges of the United States. As early as 1791 Chief Justice Jay and Judges Cushing and Duane, in considering an act of Congress imposing certain ministerial duties on the courts of the United States, unanimously declared their opinion "that neither the legislative nor the executive branches can constitutionally assign to the judicial any duties but such as are properly judicial, and to be performed in a judicial manner." In 1792 Judges Wilson, Blair and Peters addressed a letter of similar import to President Washington. Judges Iredell and Sitgreaves also protested in an elaborate opinion against the attempt. The duty under this clause in the Constitution providing for the delivery of fugitives from service is of the same character, and is to be administered in the same way as if it were stipulated in a treaty with a foreign Power. It was under a clause in our treaty with Spain stipulating for the custody and sale delivery of merchandise coming into our ports under peculiar circumstances, to the Spanish owner, that the claim was made in our courts for the surrender of the Amistad negroes. By the treaty, if they were merchandise, as they were claimed to be by the Spaniards, who had put them on board of the Amistad in Cuba, and from whose possession and control they had escaped by a successful revolt, the Government of the United States was bound, through its judicial tribunals, to deliver them up to their claimants. But the Africans insisted that they were not merchandise—that they were freemen. They stood before our tribunals upon an equal footing with the claimants. They had a right to insist that their claimants, when they called on the courts of the United States to reduce to slavery men who were apparently free, must show some law, having force in the place where they were taken, which made them slaves; or that the claimants were entitled in our courts to have some foreign law, obligatory on the Africans as well as on the claimants, enforced in respect to them; and that by such foreign law they were slaves.

It appeared most satisfactorily by the evidence, that they were kidnapped Africans, recently imported into the Island of Cuba, in violation, not only of their own rights, but of the laws of Spain abolishing the slave-trade. The Supreme Court held, that if they were at the time lawfully held as slaves under the laws of Spain, and recognized by those laws as properly capable of being bought and sold, they were, within the intent of the treaty, included under the denomination of merchandise, and as such ought to be restored to the claimants; for upon that point, say the court, the laws of Spain would seem to furnish the proper rule of interpretation. "But admitting this," Judge Story proceeds, "it is clear in our opinion that neither of the other essential facts and requisites has been established by proof; and the *onus probandi* of both lies upon the claimants, to give rise to the *casus fœderis*." "It is a most important consideration, that supposing these African 'negroes not to be slaves, but kidnapped free negroes, the treaty with Spain cannot be obligatory 'on them, and the United States are bound to re-'spect their rights as much as those of Spanish 'subjects. The conflict of rights between the 'parties, under such circumstances, becomes posi-'tive and inevitable, and must be decided upon the 'eternal principles of justice and international 'law. If the contest were about any goods on 'board of this ship, to which American citizens 'asserted a title, which was denied by the Spanish 'claimants, there could be no doubt of the right of 'such American citizens to litigate the claim be-'fore any competent American tribunal, notwith-'standing the treaty with Spain. *A fortiori* the 'doctrine must apply when human beings and human 'liberty are in issue, and constitute the very es-'sence of the controversy." Such, with the single exception of Mr. Justice Baldwin, of Pennsylvania, who dissented, was the unanimous opinion of the Supreme Court of the United States.

The inquiry then was, before the court, sitting as a Court of Admiralty, in regard to the truth and foundation of the claims of those Spaniards, who insisted that the Africans who had been in their custody as slaves, were really slaves by the law in force in Cuba. The Supreme Court decided, and properly decided, that here—there being no treaty of extradition by which they could be demanded by the Spanish Government as criminals; but only a stipulation for their delivery as merchandise, if they were really such—the fact must be established before our tribunals by satisfactory evidence, and that the duty was necessarily devolved upon the court to inquire into the existence and obligatory force upon the parties of the Spanish laws which they respectively asserted and denied.

But it is asked, "Why not send back these persons to the State from which they are alleged to have escaped, and let the inquiry be made there? Have you no confidence in the tribunals of those States under whose laws they are claimed to be held in servitude?" It is not a question, sir, whether there is confidence in those tribunals or not. The question is one affecting the liberty of an individual who has a right to remain where he is, and to assert his freedom in the State where he happens to be, until his right is disproved by evidence. But he is not demanded for trial. He will have no trial if delivered to the claimant. If he is in truth a freeman, and known to be so by his pursuer, he surely will never be taken to any State where he can have the benefit or opportunity of another trial. He will be sold into some remote part of the country, where he will be surrounded by no friends who can aid him in establishing his claim to freedom, where no evidence will be attainable to sustain it, where every presumption would be that he is a slave, and where, in addition, the certificate of the post-master or collector accompanying the sale would, in all probability, be deemed quite sufficient to doom him to hopeless bondage. It has been said by a humane judge that it is better that ninety-nine guilty persons should escape punishment for their transgressions than that one innocent man should suffer unjustly. If that be so in regard to those who are charged with crime, with how much more propriety may it be said that it is better that ninety-nine bondmen held in involuntary servitude should escape than that one freeman should be made a slave, or one free woman be surrendered up to the uncontrolled will of a master.

If, sir, it be so important in the free States to have an independent judicial tribunal to settle this question, why is it not equally so in other States, where every colored man is presumed to be a slave?

Suppose that a freeman from the State of Connecticut—and the case has actually occurred—pursuing his lawful business as a mariner, goes into one of the ports of South Carolina, and is there seized, not because he has committed or is suspected of any crime, but for the mere color of his skin, and imprisoned. The master of the vessel refuses to pay the jail fees that are endeavored to be extorted from him, and leaves the unfortunate freeman incarcerated in a jail, from which he has no hope of deliverance until he is sold as a slave, under the statute law of South Carolina, for the payment of his jail fees. Suppose this free citizen thus sold into slavery to have succeeded in escaping, and to have found his way into another State, and to be there pursued by the person who bought him as a slave. Will not that freeman be entitled to have the question of his freedom tried where he is seized, before a tribunal competent to decide it? Must he submit to the decision of some inferior executive or ministerial officer, in a state where, perhaps, a similar law exists, and who would of course recognize the validity of the sale? No, sir, he has a right to demand of the Government of the United States, who have volunteered in the performance of this duty, that they shall give him an opportunity of asserting his rights before a competent judicial tribunal, where he shall have the same measure of justice to which every free citizen is entitled. Sir, this is no hypothetical case. Many years ago I received a letter from a gentleman, now a distinguished officer in the service of the United States, then residing in Louisiana, enclosing a commission to take testimony to prove the freedom of one of my own townsmen, who, prosecuting a lawful voyage as a mariner, arrived in the port of Charleston, and was there seized, imprisoned, and sold as a slave, and had been taken by his purchaser to the slave market of New Orleans. He had named a person in Connecticut who could prove his freedom. He was a native of the State of New York, but had sailed voyage after voyage from New Haven. The commission was sent to obtain the evidence necessary to establish his freedom. I believe he was ultimately liberated through the humane exertions of this gentleman, who interested himself in his behalf.

But, sir, what a feeble chance would a negro, unprotected, under these circumstances, have of escape, in a foreign jurisdiction, hundreds of miles distant from the place of his residence, surrounded by no friends, and knowing no individual who would volunteer to aid him. Suppose, sir, that this same man, instead of being taken to New Orleans, had been retained by his purchaser in Charleston; and had escaped and found his way on board of some vessel to Connecticut. Suppose he had been there pursued and claimed as one held to involuntary servitude under the laws of South Carolina; is he to be sent back to South Carolina for trial? Would he be likely to get justice there? to obtain deliverance from those who were appointed to administer the very laws under which a free citizen had been sold into slavery—laws which were passed and have been continued in disregard of the constitutional obligations of the State toward the citizens of other States? No, sir, if that man had returned to Connecticut, and when there, in the bosom of his own family, had been pursued and seized, he would have been entitled, before he could have been taken from that State, to a trial of his right before some judicial tribunal competent to administer justice, under all the forms and solemnities, and upon all the substantial requirements of evidence ever required in courts of justice.

This law of South Carolina was enacted long anterior to any of the imputed aggressions by the free States on the rights of the South. I find, sir, in Niles's Register, under the date of September, 1823, an opinion delivered by Judge Johnson, then a distinguished Judge of the Supreme Court of the United States, a native of South Carolina, in the case of a British colored seaman who had been seized and imprisoned under this law, in which he says, in regard to its "unconstitutionality, it is 'not too much to say it will not bear an argument; 'and I feel myself justified in using this strong lan-'guage from considering the course of reasoning by 'which it has been defended."

Mr. Wirt, then Attorney General of the United States, whose opinion in regard to the constitutionality of the South Carolina law was required by the President, in consequence of the remonstrance of the British Government, who complained of it as in violation of the treaty, declared it to be unconstitutional, in terms equally decisive. That law, sir, is in these words:

"*And be it further enacted by the authority aforesaid*, That if any vessel shall come into any port or harbor of this State,

from any other State or foreign port, having on board any FREE negroes or persons of color, as cooks, stewards, or mariners, or in any other employment on board of said vessels, such FREE negroes or persons of color shall be liable to be seized and confined in jail until said vessels shall clear out and depart from this State; and that when said vessel is ready to sail, the captain of said vessel shall be bound to carry away the said free negroes or persons of color, and pay the expenses of his detention; and in case of his neglect or refusal so to do, he shall be liable to be indicted, and, on conviction thereof, shall be fined in a sum not less than one thousand dollars, and imprisoned not less than two months; and such FREE negroes or persons of color shall be DEEMED AND TAKEN AS ABSOLUTE SLAVES and SOLD in conformity to the provisions of the act passed on the 20th day of December, eighteen hundred and twenty, aforesaid."

Yes, sir, such FREE negroes and persons of color "shall be deemed and taken as *absolute* 'SLAVES, and sold in conformity to the provisions 'of the act passed on the 20th day of December, '1820, aforesaid." This is the law of the State of South Carolina—a State which has so loudly complained of the northern States for the non-fulfillment of the duties imposed upon them by the Constitution in regard to the surrender of fugitives from slavery. But, sir, this is not all. The State of Massachusetts, a few years since—in the year 1844, if I recollect right—desirous of testing the validity of this law, so injurious and oppressive to her citizens engaged in commerce and navigation, sent one of her most respected and estimable citizens, a gentleman of high-bred courtesy and honorable deportment, a lawyer of eminence at the Massachusetts bar, who had been distinguished as a member of the Congress of the United States—to South Carolina, for the purpose of adopting the proper measures to enable her to vindicate before the Supreme Court of the United States, the claims of her free colored citizens to the protection guarantied to them by the Constitution. On his arrival at Charleston, he communicated in respectful terms to the Governor of that State the object of his mission; and within a day or two after, in pursuance of the spirit, if not in accordance with the direction, of some act or resolution passed by the General Assembly of the State, he was driven, under threats or intimations of violence if he remained—from her limits, accompanied by his accomplished daughter, a descendant of one of the fathers of this Republic, who signed the Declaration of Independence, and was an active member of the Convention that framed the Constitution.

But, sir, this is not all. The legislation of that State shows that they were unwilling to trust not merely the Supreme Court of the United States to decide upon the constitutionality of this law; they dared not risk the question before the tribunals even of South Carolina herself. They actually passed a law, after the expulsion of Mr. Hoar, depriving the poor free colored men, imprisoned under this law, of the writ of *habeas corpus!* Here it is:

AN ACT of South Carolina, December 18, 1844.

Be it enacted by the Senate and House of Representatives &c., That no negro or free person of color, who shall enter this State on board any vessel as a cook, steward, or mariner, or in any other employment on board such vessel, and who shall be apprehended and confined by any sheriff, in pursuance of the provisions of said act, shall be entitled to the WRIT OF HABEAS CORPUS, or any benefit under and by virtue of the statute made in the kingdom of England, in 31 chap. 2, entitled "An act for the better securing the liberty of the subject and to prevent imprisonment beyond seas," and made of force in this State: and the provisions of the said *habeas corpus* act, and the several acts of Assembly of this State, amendatory thereof, are hereby declared not to apply to any free negro or person of color entering into this State contrary to the provisions of the aforesaid act of Assembly, passed December 19, 1835.

In the same spirit of aggression upon northern rights and the rights of northern freemen, and to prevent the possibility of their obtaining redress through the courts either of the Federal Government or of the State, another act was passed on the same day, which subjects to banishment, and such fine and imprisonment as may be deemed fit by the court which shall try the offender, any person who, on his own behalf or under any commission or authority from another State, shall come within the limits of South Carolina for the purpose, or with intent to disturb, counteract, or hinder the operation of the laws or regulations passed, or which shall be passed, in relation to slaves or free persons of color, &c.

Thus, it will be seen, are these free colored citizens of the northern States—unconstitutionally imprisoned in the jails of South Carolina—not only deprived of the right of resorting to the courts of the United States by the intervention of others in their behalf, but the writ of *habeas corpus* before the tribunals of the State is also denied them. And, as if this were not enough, these unhappy men, guiltless of crime save the color of their skin, when thus deprived of all opportunity of deliverance by law, if they are not taken away by others, and have not the means of paying the extortionate demand for their own illegal custody, are to "be deemed and taken to be SLAVES and SOLD" to pay for the expenses thus incurred!

I will not trust myself, Mr. President, to characterize this law, and I deeply regret that such a one should be found on the statute books of any of these States. Sir, whom does it affect? Citizens of the free States of this Union; men as much entitled to the rights of citizens as are men of any other color or complexion whatever. Sir, when the constitution of the United States was framed, colored men voted in a majority of these States. They voted, sir, in the State of New York, in Pennsylvania, in Massachusetts, in Connecticut, Rhode Island, New Jersey, Delaware and North Carolina, and long after the adoption of the Federal Constitution they continued to vote in the good old State of North Carolina, and in Tennessee also But, sir, the right of voting is not essential to citizenship. The free colored inhabitants of the United States are by the Constitution as much the basis of representation as any other citizens. The Constitution of the United States makes no discrimination of color. There is no word "white" to be found in that instrument. All free people then stood upon the same platform in regard to their political rights, and were so recognized in most of the States of this Union. How, then, is it that one of these States ventures to assail the rights of citizens of other States thus sacredly guarded by the Constitution?

Mr. BADGER. With the permission of the Senator, I would ask whether free black persons are allowed to vote in Connecticut now?

Mr. BALDWIN. Mr. President, they are not; but they are none the less citizens than if they were allowed to vote. They vote in all the New England States except Connecticut, and, in my judgment, they ought to be allowed to vote there also; and when the proposition was made not long since for an amendment of the constitution of Connecticut to enable them to vote, I deposited my

ballot in favor of the right. I should do so again if the opportunity occurred. I hold, sir, in regard to the political rights of freemen, whatever may be true in reference to their social position, which will regulate itself, there should be no distinction of color. But, Mr. President, they are not only citizens of the free States, but they are citizens of the State of Virginia to this day, as much as they are in the State of Connecticut. I hold in my hand the statute of the State of Virginia, passed December 23, 1792, prescribing the qualification of citizenship. It provides that:

"All free persons born within the territory of this Commonwealth, all persons, not being natives, who have obtained a right to citizenship under former laws, and also all children, wheresoever born, whose fathers or mothers are or were citizens at the time of the birth of such children, shall be deemed citizens of this Commonwealth until they relinquish that character in the manner hereinafter mentioned."

It is a little curious to examine the history of this law of the State of Virginia. It will be recollected by Senators that one of the articles of the old Confederation (article fourth) was in these words:

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy," &c.

On the 25th of June, 1778, the delegation from South Carolina moved in Congress to amend that clause in the articles of Confederation by inserting the word "white" between the words "free" and "inhabitants." The question was taken, and there were found to be ayes two, noes eight. So that the article remained as it was originally adopted. In 1779, before the articles of Confederation had been ratified by a sufficient number of States to make them binding, the State of Virginia passed an act prescribing the qualifications of citizens, and inserted the word "white."

In 1783, after the adoption of the articles of Confederation, Virginia repealed that act, and passed another, in which she omitted the word "white," and left her law standing in that respect substantially as it has remained upon her statute book from that day to this, showing that the State of Virginia, though concurring at that time with South Carolina in the desire to insert the word "white," yet respected the decision of Congress, and the States in the adoption of the articles of Confederation, and conforming her own law thereto, extended the privileges of citizenship alike to all, without distinction of color. And to this day, in the State of Virginia, free colored persons, born in that State, are citizens.

Why, sir, who ever doubted that colored inhabitants were citizens of the United States within the provisions of the judiciary act authorizing citizens of one State to sue before the Federal courts in another State? Who ever doubted that a free colored inventor was entitled to the benefit of the patent law, or a colored author of the privilege of copyright, as citizens of the United States? Who ever doubted that colored citizens, owning and navigating vessels of the United States, were entitled to all the privileges conferred by law upon vessels owned by citizens of the United States? They take the oath of citizenship under the act of February, 1793, for enrolling and licensing American vessels. Who ever questioned their right? Are not colored seamen entitled to protection under your laws authorizing the granting of protection to citizens of the United States who are serving as mariners on board your vessels? Why, sir, the form of the protection is in these words:

"That the said E. F. is a citizen of the United States of America."

Are they not citizens within the meaning of the act of May, 1820, making it criminal for citizens of the United States to engage in the slave trade? Are they not citizens within the act forbidding licenses to carry on trade with the Indians to any but citizens? Are they not within the protection of our treaties, as citizens of the United States, in regard to any property they may own? And are they not under the obligations imposed by treaty on our citizens? Are they not within your bill of rights, in the Constitution which was adopted by their votes, securing the liberty of speech and the liberty of the press, and all the other personal rights, to the people of the United States? It seems to have been supposed by some Senators, that, in order to make a man a citizen, he must have a right to vote in the State in which he claims to be a citizen. Why, sir, are not females in all our States citizens of the United States? They do not vote. There are States in which naturalized citizens of the United States are not entitled to vote until they have acquired property qualifications to a certain amount, even though native citizens are not required to possess those qualifications. Such is the provision in the constitution of Rhode Island; and a similar provision, I believe, is contained in some other State constitutions.

Again, it seems to have been supposed by some Senators that the claim is, because a man is entitled as a citizen of one State to all the rights and privileges of a citizen of every other State, that if he is a voter in one State, he has therefore a right to exercise the privilege of voting when he removes to another State. That does not follow at all. When he removes to another State and changes his domicil, he loses all claim arising out of his citizenship in the State which he has left. He becomes a citizen or inhabitant of the State to which he has removed, and subjects himself, of course, to its local policy. As an inhabitant of the State to which he has removed, he is not in a condition to claim to exercise the federal rights which pertained to him when a citizen of another State. These rights are to be enjoyed only by those who remain citizens of other States than those in which they may have occasion to exercise them.

Mr. Hamilton, on the 1st of April, 1783, moved an amendment to the articles of Confederation, "that the Treasury should be supplied in proportion, &c. to the whole number of *white and other free citizens*," which was adopted by all the States except Rhode Island.

The act of Congress of 28th February, 1803, prohibits the bringing of any negroes or other persons of color, not being a native, a *citizen*, or registered seamen of the United States, into any of the ports of the United States. I have mentioned that by the law of the State of Virginia, as it now exists, free colored persons are citizens. By the charter of the city of Alexandria, at the time of the cession of that county to the United States as a part of the District of Columbia, all male citizens

possessing certain qualifications had the right to vote, and among others persons of color.

But I will spend no more time upon this part of the argument. Enough surely has been said to show that the free colored citizens of the northern States are entitled by the Constitution to all privileges and immunities of citizens in the several States to which they may have occasion to go. The law of Virginia, I may remark, was in force at the time of the adoption of the Constitution, and doubtless the discussions which led to the change of the Virginia law of 1779 were fresh in the recollections of the actors in the political scenes of that day. I think then, Mr. President, it will hardly be expected that the decision of any inferior local tribunal, acting under the laws of those States which thus disregard the federal rights secured by the Constitution to all the free citizens of the other States, would be deemed satisfactory upon a question of human liberty, to which a colored citizen of a free State seized as a fugitive slave might be a party. I think, sir, that the safety of this class of citizens demands that the question should be heard and decided by the permanent judicial tribunals of this Government. If I am right in the views I have taken on this subject, then the bill proposed by the Committee on the Judiciary certainly ought not to be adopted by Congress, because it attempts to impose judicial duties on those whose offices neither qualify nor authorize them to exercise functions of that sort, and who are not appointed in the mode prescribed by the Constitution for those who are to exercise the judicial power. But if these are not judicial duties, if this is not an exercise of judicial power, then, I ask again, by what authority is it attempted to be conferred on the judges or the courts of the United States?

On the whole, Mr. President, it appears to me that all that is needed upon this subject of fugitive slaves, is to amend the existing act of Congress so as to confine the exercise of the powers conferred to the judges or courts of the United States, and to secure to those who allege themselves to be free the advantage of an impartial jury to aid the courts in the ascertainment of facts.

With regard to other grievances which have been complained of, I do not propose at this time to examine them at large. The burden of the complaint, however, seems to be that petitions have been sent here from time to time by great numbers of individuals in the northern States who are desirous that Congress shall exercise all its constitutional powers in relation to the abolition of the slave-trade here, and of slavery wherever the jurisdiction of Congress may extend. Well, sir, what then? Is this any interference with the rights of any State? Is it any grievance of which the people of any State can complain, if these petitioners confine their request to the action of Congress, where Congress has the entire and exclusive power of legislation? Senators may not be willing to grant these petitions; but have they any right to say that they or their constituents are aggrieved by their presentment? Sir, I have long entertained the opinion that, if southern gentlemen had been united in the desire that all agitation on this subject should cease, they would have listened to the petitions of the people of this District, who have repeatedly asked for legislation in regard to the slave-trade and slavery here. As long ago as 1802, the traffic in slaves carried on in the city of Alexandria was attended with so many atrocities as to cause a presentment of it by a grand jury as a grievance demanding legislative redress. A judge of the circuit court in this city spoke of it in 1816, in a charge to the grand jury, as shocking to the feelings of all humane persons. And a petition for the suppression of the slave-trade, and for the adoption of measures for the gradual abolition of slavery, was presented to Congress by more than a thousand of the inhabitants, comprising a majority of the property-holders in the District, in 1828. Had the prayer of these petitioners been listened to, not only would the sickening scenes, of which the petitioners complained as so painful to the feelings of the people of the District, have been long since at an end, but the plan they recommended for the gradual abolition of slavery in the District would by this time have brought the system very nearly to an end, in the very way that it has been accomplished in nearly all the States which have hitherto abolished it.

Complaints have been made that people from other parts of the country have petitioned, as well as the people of the District, who alone, it is said, are concerned. Is it at all surprising that they have done so, when they have seen with what neglect the petitions of the residents of the District have been treated by Congress—when they witness the continuance, unchecked, of a system to which they are in principle opposed, and for which, in common with the rest of the people of the United States, they feel that they are in some measure responsible?

I will not, Mr. President, occupy further the time of the Senate in this discussion. I will only say, in conclusion—and I say it with great deference to the opinions of others—that there is, in my opinion, but one course to be pursued to calm the agitations that now surround us, and prevent their recurrence. It is to place ourselves firmly on the platform of the Constitution, adhering faithfully to its compromises, and administering, in the spirit which animated our fathers, and in the light of their admonitions and example, the powers confided to us by the people. No compromises of principle are required for our security. No sectional concessions should be asked, or expectations encouraged; but even-handed justice secured to all. Pursuing such a course, I fear no danger to the Union. Its foundations are too deeply laid in the interests and affections of the people, and in their cherished recollections of the past, to be easily disturbed. It is emphatically their government; and its powers, though wisely and carefully limited, are amply sufficient, if beneficently directed, to lead us to a higher degree of national glory and happiness than has fallen to the lot of any other people.

Let us, then, be just and faithful to the Constitution, and fear not; acting on every question, as it is presented, in a spirit of patriotism, justice, and firmness. And whatever may be the result of our deliberations, if there be any who for such a cause are ready to cry out disunion, and encourage the formation of sectional combinations to promote it, they have only to turn their eyes in any direction to see the hand-writing on the wall, in characters which cannot be mistaken, to warn them to beware.

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